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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,914	01/20/2005	Keyvan Mazda	1107-050118	7041
28289	7590	03/19/2008	EXAMINER	
THE WEBB LAW FIRM, P.C. 700 KOPPERS BUILDING 436 SEVENTH AVENUE PITTSBURGH, PA 15219				CUMBERLEDGE, JERRY L
ART UNIT		PAPER NUMBER		
3733				
MAIL DATE		DELIVERY MODE		
03/19/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/521,914	MAZDA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	JERRY CUMBERLEDGE	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 December 2007.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 24-34 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 24-26 and 28-34 is/are rejected.  
 7) Claim(s) 27 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 04 October 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-26 and 28-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fiz (US Pat. 6,179,838 B1) in view of Golds et al. (US Pat. 5,356,412).

Fiz discloses a vertebral fixation system comprising: a spinal rod (Fig. 6, ref. 4); a connecting part (Fig. 6) including a first longitudinal member (Fig. 6, ref. 38) and a second longitudinal member (Fig. 6, ref. 64) moveable relative to each other between a first position and a second position (Fig. 6)(Fig. 7), the first longitudinal member and the second longitudinal member configured to capture the spinal rod when in the second position (Fig. 6(Fig. 7), at least one of the first longitudinal member and the second longitudinal member having an orifice (Fig. 8, e.g. holes between ref. 36, 62, 34) to receive a second end of a ligature therethrough to define a loop between the first end and second end of the ligature, the loop extending from the connecting part and being adjustable in size when the first longitudinal member and the second longitudinal member are in the first position, and a lock (Fig. 6, ref. 82) to secure the first longitudinal member and the second longitudinal member in the second position with the rod captured therebetween. The first longitudinal member and the second longitudinal

member are joined by a hinge (Fig. 6, ref. 50) for movement between the first position and second position (Fig. 6). The hinge includes a pivot pin (Fig. 6, ref. 52) rotatably connecting a first end of the first longitudinal member and a first end of the second longitudinal member (Fig. 6)(Fig. 7). The connecting part defines a passage (Fig. 8, refs. 40, 66) configured to capture the spinal rod when the first longitudinal member and the second longitudinal member are in the second position. The orifice in the at least one of the first and second longitudinal members is in communication with the passage (Fig. 8). The passage is defined by a groove (Fig. 8, refs. 40 and 66)) in an internal face of at least one of the first longitudinal member and the second longitudinal member (Fig. 8). The other of at least one of the first longitudinal member and the second longitudinal member has a second orifice (Fig. 8, e.g. holes between ref. 36, 62, 34) defined therein to receive the second end of the ligature therethrough. The lock includes: a first bore (Fig. 3, ref. 58) through the first longitudinal member; a second bore (Fig. 3, bore aligned with and below ref. 58) through the second longitudinal member, wherein the second bore is aligned with the first bore when the first longitudinal member and second longitudinal member are in the second position; a screw (Fig. 6, ref. 82) extending between the first bore and the second bore.

Fiz discloses the claimed invention except for a ligature having a first end directly attached to the connecting part and a second end opposite the first end; the loop being fixed in size when the first longitudinal member and the second longitudinal member are secured in the second position with the rod therebetween; the ligature is a flexible strip;

the flexible strip is made of a polymer. Fiz discloses that a pedicle screw is used to attach the device to the bone (column 3, lines 64-66).

Golds et al. disclose a device that comprises a device used to stabilize bone (abstract) that comprises connecting part which comprises longitudinal members (Fig. 11, ref. 84 and ref. 88) that are pivotable relative to one another (Fig. 4 and Fig. 5) that comprise a ligature having a first end directly attached to a connecting part (Fig. 11, ref. 12a), the ligature comprising a fixed loop (Fig. 11, ref. 12a), the ligature comprising a flexible strip (Fig. 1, ref. 12), and the ligature comprising a flexible strip (column 3, lines 63-67)(column 4, lines 1-10). The strap is used to attach the device to a bone (column 3, lines 56-62).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have substituted the pedicle screw of Fiz with the flexible ligature of Golds et al. to achieve the predictable result of attaching the device to a bone.

### ***Allowable Subject Matter***

Claim 27 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JERRY CUMBERLEDGE whose telephone number is (571)272-2289. The examiner can normally be reached on Monday - Friday, 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. C./

Examiner, Art Unit 3733

/Eduardo C. Robert/  
Supervisory Patent Examiner, Art Unit 3733